

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON CHISM,

Petitioner, No. CIV S-03-1793 MCE KJM P

vs.

D. ADAMS,

Respondent. ORDER

On March 10, 2010, this habeas matter was on calendar for a status regarding the court's initial determination that an evidentiary hearing is required. Peter Gold, Esq., appeared telephonically for petitioner; David Baskind, Deputy Attorney General, appeared telephonically for respondent.

Petitioner alleges that his plea of no contest was not voluntary because he was not informed he would thereby be waiving his right to appeal, and that trial counsel was ineffective because he advised petitioner he retained the right to appeal after his plea. He has provided a declaration averring, in relevant part, that he did not check the box on the plea form concerning his right to appeal on advice of trial counsel, and that trial counsel told him he had good issues for appeal. Docket No. 36-4 ¶¶ 13, 16. Respondent has submitted trial counsel's declaration, in which counsel avers he informed petitioner he would have to waive his right to appeal in order to

1 proceed with the plea. Docket No. 49-2 ¶ 6. The record of the plea proceedings shows that trial
2 counsel informed the court that petitioner did not initial the section on waiving his right to
3 appeal. The prosecutor said this was a standard condition of a plea and said she wanted to make
4 it a condition of this plea. The parties then went off the record. RT 308. Thereafter, the court
5 did not inform petitioner he was giving up his right to appeal and that portion of the plea form is
6 neither checked nor initialed. RT 309-311; CT 235. In the traverse filed in this matter,
7 petitioner's counsel asked the court to order an evidentiary hearing. Docket No. 58 at 24.¹

8 The parties are directed to file simultaneous briefs within twenty-one days of the
9 date of this order, limited to five pages each, addressing whether petitioner is entitled to an
10 evidentiary hearing under the AEPDA.

11 DATED: March 11, 2010.

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14 U.S. MAGISTRATE JUDGE
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26 ¹ The court refers to the page numbers assigned by its ECF system.